

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27169-2-III

Respondent,

Division Three

v.

CHRISTOPHER JOHN FREEMAN,

UNPUBLISHED OPINION

Appellant.

Sweeney, J. — An attorney may not testify about communications made to him by his client unless the client waives the privilege. RCW 5.60.060(2)(a). A client waives the privilege as to an entire confidential communication by testifying about part of that communication. *State v. Vandenberg*, 19 Wn. App. 182, 186, 575 P.2d 254 (1978). The defendant here testified that he left telephone messages for his attorney, telling him he could not attend a pretrial hearing because he had a migraine headache. His attorney then testified about those messages on rebuttal. On these facts, we conclude that the defendant waived attorney-client privilege. We, therefore, affirm his conviction.

FACTS

The State charged Christopher Freeman with bail jumping after he failed to appear at a pretrial hearing. He testified that he did not attend the hearing because of a migraine headache. He said he called his attorney, Rob Cossey, and told him that he could not go to the hearing because of the headache. And he said he thought Mr. Cossey would explain his absence to the court and move to continue the hearing.

The State then called Mr. Cossey to rebut Mr. Freeman's testimony. Mr. Freeman asserted attorney-client privilege and asked the court to prohibit Mr. Cossey from testifying. The trial court concluded that Mr. Freeman had waived attorney-client privilege by testifying about his communications to Mr. Cossey and allowed Mr. Cossey to testify.

Mr. Cossey remembered that Mr. Freeman had left him two messages telling him that he would not be at the hearing. Mr. Cossey, however, did not remember Mr. Freeman saying that a migraine headache prevented him from appearing.

A jury found Mr. Freeman guilty of bail jumping.

DISCUSSION

The sole issue on appeal is whether the trial court properly concluded that Mr. Freeman waived his attorney-client privilege as to the communications at issue. We review this issue de novo. *See Stephens v. Gillispie*, 126 Wn. App. 375, 381-82, 108 P.3d 1230 (2005).

The attorney-client privilege protects communications between an attorney and his client. *In re Guardianship of York*, 44 Wn. App. 547, 553, 723 P.2d 448 (1986). “An attorney . . . shall not, without the consent of his . . . client, be examined as to any communication made by the client to him . . . in the course of professional employment.” RCW 5.60.060(2)(a). A client, then, can waive the attorney-client privilege. *Sitterson v. Evergreen Sch. Dist. No. 114*, 147 Wn. App. 576, 583, 196 P.3d 735 (2008).

Mr. Freeman contends that he did not waive the privilege and that the trial court, therefore, erred by allowing Mr. Cossey to testify about their protected communications. Mr. Freeman relies on *Vandenberg* for support. 19 Wn. App. at 186.

State v. Vandenberg

The defendant in *Vandenberg* was charged with grand larceny. *Id.* at 183. At trial, the defendant’s wife testified that a guest brought stolen items into their home and that she and the defendant did not know the items were stolen. *Id.* She did not testify that she communicated this information to an attorney even though she had. *Id.* The *Vandenberg* court held that the wife’s attorney should not have been allowed to testify about relevant but confidential communications he had with the wife about the stolen items. *Id.* at 182. The court reasoned that the defendant’s wife had not waived the attorney-client privilege because she merely testified about “specific facts about which [s]he has happened to communicate with the attorney.” *Id.* at 187.

Vandenberg is factually distinguishable from this case. Here, Mr. Freeman voluntarily testified that he communicated certain facts to his attorney. He said he told his attorney that he could not attend a court hearing because of a migraine headache. Mr. Freeman then testified about specific facts in the context of specific communications to his attorney. A client waives the attorney-client privilege as to an entire communication to his attorney by offering his own testimony about part of that communication. *Id.* at 186. The trial court here properly allowed Mr. Cossey to testify about the communications related by Mr. Freeman.

Confidential Communication

Mr. Freeman also suggests the communications at issue here were confidential. They were not. The attorney-client privilege attaches only to communications that are intended to be confidential. *State v. Post*, 118 Wn.2d 596, 612, 826 P.2d 172, 837 P.2d 599 (1992). And information supplied to an attorney for disclosure is not intended to be confidential. *Stephens*, 126 Wn. App. at 381. Mr. Freeman told Mr. Cossey he would not be able to attend the hearing so that Mr. Cossey could explain his absence to the court and move for a continuance. Mr. Freeman's testimony, then, suggests to us that he intended that his communications be relayed to the court. Accordingly, these communications were not protected by the attorney-client privilege. *Post*, 118 Wn.2d at 612. Mr. Cossey could have testified about the communications without a waiver.

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We affirm Mr. Freeman's conviction.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR:

Sweeney, J.

Schultheis, C.J.

Brown, J.